

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID MARISCAL.

Petitioner,

V.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

Case No. 2:18-cv-00347-GMN-VCF

ORDER

Petitioner has submitted an application to proceed in forma pauperis (ECF No. 1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee.

Petitioner challenges his custody pursuant to the judgment of conviction of the Second Judicial District Court of the State of Nevada, Case No. CR94-0080. Petitioner challenged his custody pursuant to the same judgment of conviction in Mariscal v. Skolnik, Case No. 3:07-cv-00296-LRH-VPC. The court denied that petition on its merits, and the court of appeals denied a certificate of appealability. Consequently, the current petition is a second or successive petition under 28 U.S.C. § 2244(b). Petitioner must first obtain authorization from the court of appeals before this court can consider his petition. 28 U.S.C. § 2244(b)(3). Nothing in the documents that petitioner has filed indicates that he has received such authorization. Petitioner will need to show cause why the court should not dismiss the action.

1 Petitioner has filed a motion for appointment of counsel (ECF No. 2) and a request for
2 evidentiary hearing (ECF No. 3). The court denies these motions because it appears that
3 petitioner is not authorized to proceed with this action. If petitioner can show authorization, then
4 he may renew these motions.

5 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF
6 No. 1) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

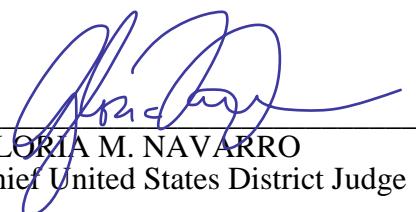
7 IT FURTHER IS ORDERED that petitioner's motion for appointment of counsel (ECF
8 No. 2) is **DENIED**.

9 IT FURTHER IS ORDERED that petitioner's request for evidentiary hearing (ECF No. 3)
10 is **DENIED**.

11 IT FURTHER IS ORDERED that the clerk of the court shall file the petition for a writ of
12 habeas corpus pursuant to 28 U.S.C. § 2254.

13 IT FURTHER IS ORDERED that petitioner will have thirty (30) days from the date of
14 entry of this order to show cause why this action should not be dismissed as a second or
15 successive petition. Failure to comply will result in the dismissal of this action.

16 DATED: **June 20, 2018**



17 GLORIA M. NAVARRO
18 Chief United States District Judge

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